



Tackling the COVID-19 challenge—a view from the DOJ

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The COVID-19 pandemic has profoundly affected our way of life, disrupting our daily routines, and changing how we work, interact, and consume. These changes are necessary to impede the spread of the virus, but the resulting economic effects are broad and painful. The Antitrust Division remains open for business, however, and there is much that we can do to help our nation during these trying times.

In the short term, the Antitrust Division has instituted a number of temporary changes to protect our employees and the parties that appear before us, while continuing to further our mission to protect competition for the benefit of American consumers. In mid-March, following guidance from the US Office of Management and Budget, the Division moved to a maximum telework plan, under which employees work remotely to avoid unnecessary contact. This herculean effort was swiftly accomplished in a few short weeks across all of our offices, in four geographic areas deeply affected by COVID-19: New York, NY, Washington, DC, Chicago, and San Francisco. The Division has begun conducting meetings by video and teleconference, accepting electronic filings of Hart-Scott-Rodino notifications, and preparing to appear via teleconference in courtrooms across the USA.

I am immensely proud of the employees of the Antitrust Division for taking these important steps to decrease the spread of COVID-19; it is impressive how seamlessly they have accomplished this transition. The dramatic shift to maximum telework is not without its challenges, especially as Division personnel juggle the same personal difficulties facing many Americans in these times. On the work front, inherent difficulties in working remotely have made some day-to-day tasks and decisions more complex. For example, getting information from parties and third parties, appearing before grand juries and courts, and communicating within and among teams have all required additional steps. As a result, the Antitrust Division has sought minimal accommodations from parties, such as requesting from merging parties an additional 30 days to complete a comprehensive review of proposed transactions.

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The Antitrust Division has also worked closely with other federal agencies, including the US Departments of Health and Human Services, Defense and Agriculture, the Federal Emergency Management Agency, the Centers for Medicare and Medicaid Services, and the White House Coronavirus Task Force, in order to ensure that critical products, such as personal protective equipment (PPE) and medical supplies, are rapidly deployed where they are needed most, including to healthcare workers on the frontline. To ensure greater clarity during these uncertain times, we released a joint statement with our colleagues at the Federal Trade Commission (FTC) detailing several types of collaborative activities among competitors that would be consistent with the antitrust laws, and outlined an accelerated business review process for companies that need it. Only 11 days later, the Antitrust Division issued our first business review letter pursuant to this expedited process. The letter explained that the Antitrust Division would not challenge the collaborative efforts of medical supplies distributors to work with federal authorities to expedite and increase manufacturing, sourcing, and distribution of PPE and certain medications necessary to treat COVID-19 patients.

In a second joint statement with the FTC, the Antitrust Division reaffirmed the importance of competition for American workers, particularly providers of essential services such as healthcare workers, as well as employees of key businesses such as grocery stores and pharmacies. We expressed our commitment to enforcing the antitrust laws against those who exploit the pandemic to engage in anticompetitive conduct in labor markets, such as by entering into unlawful wage-fixing and no-poach agreements.

Indeed, guided by the Attorney General, the Antitrust Division has prioritized the criminal investigation and prosecution of competition cases related to COVID-19. Through the Antitrust Division's Procurement Collusion Strike Force and other tools, we will hold accountable individuals and companies that use the pandemic as an opportunity to engage in criminal antitrust violations, including bid-rigging, price-fixing, and market allocation. The Strike Force, which the Antitrust Division launched last year, is an interagency partnership of law enforcement personnel and prosecutors across the Department, which aims to combat criminal antitrust violations affecting public procurement. Given its focus, the Strike Force is on high alert for collusive practices in the sale of important healthcare products to federal, state, and local agencies.

Of course, addressing the spread of COVID-19 requires not only unprecedented cooperation among federal, state, and local governments but also cooperation with our international counterparts. The Antitrust Division is, therefore, leveraging our existing bilateral relationships and ties to multilateral organizations, such as the International Competition Network (ICN) and the Organisation for Economic Cooperation and Development (OECD), to increase communication and cooperation. Specifically, as the Antitrust Division grasped the global magnitude of the pandemic, we spearheaded an effort to facilitate communication among ICN members about our COVID-19 responses. Through these efforts, we are exchanging rapidly developing information on a daily basis regarding how COVID-19 has impacted the enforcement efforts of competition agencies around the world.

As we continue to respond to the immediate needs facing the USA, the Division also pays heed to any potential long-term effects of the COVID-19 pandemic. Accordingly, on the legislative front, we are advising HHS in effectuating existing legislation, such as the Defense Production Act. The Division is also helping evaluate legislative changes to ensure that we not only have the right tools in place to fight the COVID-19 pandemic now but also to respond to other health crises in the future.

Despite the many challenges during these times, I am heartened by how we have joined together in this fight and have full confidence in the resiliency of the American economy and the people that build it. The American economy is fundamentally strong, and one of the important features of a vigorous economy is effective and efficient antitrust enforcement—enforcement that can adapt to rapidly changing and unpredictable conditions. The Antitrust Division will continue to closely monitor pandemic developments and guidance, and we stand ready to pursue both civil and criminal violations of antitrust laws. As we move through the course of this pandemic, it is imperative that we continue to protect each other—both from the devastating health impact of this virus and from any anticompetitive conduct that may accompany it.